UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr.
GENERAL

CRC/C/SR.42
3 March 1993

ENGLISH
Original: FRENCH

COMMITTEE ON THE RIGHTS OF THE CHILD

Second session

SUMMARY RECORD OF THE 42nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 October 1992, at 10.00 a.m.

Chairman: Mrs. BADRAN

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GE.92-17796 (E)

The meeting was called to order at 10.20 a.m.

QUESTION OF URGENT APPEALS (agenda item 11)

1. The CHAIRMAN said that, under agenda item 11, members must define the Committee's role and the procedure to be adopted when the Committee was informed through the secretariat or one of its members of a critical situation affecting children in a specific country.

2. Mr. HAMMARBERG, introducing the discussion paper he had prepared on the subject, said that the Committee, as trustee of the Convention on the Rights of the Child, must react when informed about a serious situation affecting any of the rights of the child. At the same time, care should be taken to define precisely the procedure to be followed and the criteria for determining which type of situation required the Committee to take an "urgent response". In that respect, the term "urgent response" should be used rather than "urgent appeal", the latter being used essentially by non-governmental organizations (NGOs).

3. On the question of criteria, the situation in question must naturally be related to the obligations of States parties under the Convention, and the State concerned must obviously have ratified the Convention. The situation must also be serious, truly urgent and entail a risk of further violations. The Committee should bear in mind that the procedure could only be truly effective if it remained exceptional. For the procedure to be set in motion, the initiative should come from Committee members, United Nations bodies, specialized agencies or spokespersons for children concerned. The Chairman or the Rapporteur should, in collaboration with the secretariat, undertake an examination of the situation in question, following which the Bureau of the Committee would take a decision in order to determine whether the case called for an "urgent response". If it did, the Committee should address a letter to the Government concerned, setting out the information available, referring to the relevant articles of the Convention and requesting a response, in a spirit of dialogue and in no way as an accusation, as part of the reporting obligations of States parties. Lastly, it was important that the procedure should be initiated regardless of any political considerations.

4. Mrs. EUFEMIO said the Committee should define what it meant by urgent situation and establish a time-frame for its response.

5. Mgr. BAMBAREN GASTELUMENDI said that more general urgent situations which might be common to several countries, should also be encouraged. In such cases, the Committee should consider another form of response. Moreover, if the Committee was not sure of the truth of the allegations, it might request NGOs or United Nations bodies to ascertain the true situation. It was not certain that the Committee would be able to take a decision in all cases, but members might well be in a position to take action individually. Admittedly, the members of the Committee did not officially represent their regions of origin, but they were none the less accountable to public opinion in the region from which they came. Consequently, members should be able to speak out publicly, as individuals, more particularly through the media.

6. Mrs. BELEMBAOGO said she supported Mr. Hammarberg's proposal and suggested in addition that the Committee should establish what basic information would be required within the framework of such an urgent procedure.

7. Mr. MOMBESHORA, quoting the example of Somalia, which had not ratified the Convention on the Rights of the Child, said that the Committee should work out a procedure which would also enable it to respond to extremely urgent situations in States not parties to the Convention.

8. Mr. KOLOSOV said that there were very few exceptions in international law to the rule whereby only the States parties to an international instrument were answerable to the mandate of the treaty body. The Committee could not therefore have recourse to the urgent procedure envisaged for a situation affecting a State which was not a party to the Convention. As in certain procedures in the context of the Conference on Security and Cooperation in Europe, the Committee should inform States parties as a whole, through the secretariat, of the measures which would be undertaken under the urgent procedure.

9. Mrs. SANTOS PAIS said she, too, supported Mr. Hammarberg's proposal. She further proposed that the Committee should act not only when it had information from NGOs, United Nations bodies, specialized agencies or children's spokesmen, but also when it knew of a serious situation quite simply because the situation was obvious. As to violations of children's rights in a State that was not party to the Convention, two solutions might be envisaged. On the one hand, the Committee might transmit relevant information to other monitoring bodies when the State was a party to the treaty in question; on the other hand, it might transmit the relevant information to other bodies under the authority of which special rapporteurs or working groups examined general problems in different countries, whether or not they had ratified the relevant international instruments. Lastly, with reference to publicising urgent measures taken by the Committee, mention should be made of them in the Committee's report to the General Assembly. In that way, States parties as a whole would be informed of the measures taken under the urgent procedure.

10. Mr. HAMMARBERG said that the urgent procedure could apply only to States parties to the Convention. More general questions affecting a number of countries, such as those relating to children in armed conflicts, or to famine or child labour, might be taken up under the general debate or in studies the Committee might request the Secretary-General to undertake. If the Committee heard of violations of childrens rights in a country that was not party to the Convention, it could call on the Secretary-General's good offices and ask him to take specific measures. It might also make its position known through press releases, after carefully verifying that the information communicated to it was reliable. In that respect, the Committee must define the procedure to be followed for the examination of communications addressed to it.

11. Mr. KOLOSOV said that he shared the concern about violations of children's rights in States not parties to the Convention. In that respect, while article 43 of the Convention permitted the Committee to examine the progress achieved by States parties in implementing its obligations under the

Convention, the last paragraph of the preamble stressed the importance of international cooperation in improving the living conditions of children in all countries - in other words, even in those not parties to the Convention. Moreover, if the Committee was not competent to make a direct approach to a State in which children's rights were being violated, it could none the less inform the relevant human rights treaty monitoring body. He supported Mrs. Santos Pais's proposals in that respect.

12. Mr. GOMES DA COSTA said that, like Mr. Hammarberg, he considered the Committee could take urgent action and address a State party in application of article 44, paragraph 4, which stated that the Committee might request from States parties further information relevant to the implementation of the Convention. None the less, the Committee should not have recourse to such a procedure unless the situation was serious and called for urgent measures.

13. Mrs. EUFEMIO said she supported Mrs. Santos Pais's proposal to inform other treaty bodies about violations of children's rights in States not parties to the Convention. The Convention should perhaps be altered in that respect to authorize the Committee to examine such situations.

14. Mr. KOLOSOV said that the information on urgent action taken by the Committee should not only be included in the Committee's reports but should also be brought immediately to the notice of States parties by the Secretary-General as the depositary of the Convention under article 53. The Secretary-General's powers in that respect should also be specified.

15. Miss MASON said that, in the event of an emergency, there should be no delay in taking action and no question of getting lost in red tape, for children - the future of mankind - could not wait. The Committee could not use article 43 of the Convention as an excuse not to take action in the face of violations of children's rights in countries which were not parties to the Convention and in which such violation called for an immediate response on the part of the Committee.

16. Mrs. SANTOS PAIS noted that as all the members of the Committee agreed on the need for action they had to reach agreement on ways and means. The Committee could in particular immediately transmit the information it had available to other international treaty bodies, special rapporteurs and working groups concerned. It could also include the list of urgent appeals addressed to States in its reports. She supported Mr. Kolosov's proposal concerning the role the Secretary-General might play as depositary of the Convention.

17. The CHAIRMAN, summing up the discussion so far, said the Committee appeared to be in agreement on a number of points. The Committee could take urgent action only in connection with States that were parties to the Convention. When urgent situations were brought to its notice in non-party countries, it could transmit the information available to it to the appropriate treaty bodies and regional organizations. It could also make public the list of urgent situations it had considered. Again, it could act only when the urgent nature of the situation so required. It was for the

Bureau to decide on the action to be undertaken and to inform other members of the Committee. The State party must explain in its report which measures had been taken to remedy the situation. The Committee could also ask it to provide any further information in accordance with article 44, paragraph 4 of the Convention; it should look at the measures taken by the State concerned; members of the Committee could also go to the country in question to observe on the spot how the situation was developing, and, finally, action taken by the Committee must be made public.

18. Mrs. EUFEMIO said it was important as Mrs. Santos Pais had pointed out, that relations between the Committee and States should not be conflictual. Moreover, personal contacts with representatives of States were often preferable to written exchanges.

19. Mrs. SANTOS PAIS said it was only natural for the Committee to give an account of its initiatives and urgent actions in its report. In addition, she proposed that the Chairman should provide information on the urgent action procedure envisaged by the Committee to the chairpersons of human rights treaty bodies, who were to meet in a week's time; as all bodies were faced with similar problems, it might be possible to adopt general conclusions.

20. Mgr. BAMBAREN GASTELUMENDI raised the question of situations in which States were not directly responsible - for example, in cases of child prostitution networks - and of situations in which a number of States were involved in committing serious violations.

21. Mr. KOLOSOV wondered if it would not be appropriate for the Committee to request legal advice in order to finalize the urgent action procedure.

22. Mr. HAMMARBERG said that all types of action proposed should be linked to the provisions of the Convention or existing procedures. Thus, the urgent action procedure should be tied in with paragraph 4 of article 44 of the Convention, under which the Committee might request from States parties further information relating to implemention. The question of a situation involving more than one country might either be considered as a thematic problem, in accordance with section 9 of his note or dealt with separately. The Committee was also at liberty to amend its rules of procedure, which were provisional, so as to include a type of procedure appropriate to such situations. In cases of violations in which States were not the main parties involved, under existing human rights mechanisms States were none the less considered responsible and their obligation in relation to human rights instruments was to penalize the offences committed and to take action against the perpetrators.

23. The CHAIRMAN suggested that the Committee should decide either to continue its discussion on violations involving several States, or to appoint a working group to identify the main ideas on the issue.

The meeting was suspended at 11.35 a.m. and resumed at 12.05 p.m.

24. The CHAIRMAN suggested that, further to the informal exchange of views during the suspension of the meeting, a working group should be set up to consider the question of situations in which several countries were involved and to submit to the Committee mechanisms enabling it to act in such situations. Mr. Hammarberg could produce a new version of his note to include both the suggestions made during the discussion and the conclusions of the working group. Lastly, Mgr. Bambaren Gastelumendi could participate in the working group, preferably together with those members of the Committee with legal training.

25. It was so decided.

FUTURE STUDIES (agenda item 12)

26. Mrs. BELEMBAOGO pointed out that the present agenda item had already been discussed at the previous session. The Committee's ability to commission and undertake studies came from article 45 of the Convention, which specified that the Committee could recommend to the General Assembly to request the Secretary-General to undertake studies on specific issues relating to the rights of the child and to invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention. The Committee had hoped to request independent experts to prepare studies on specific subjects but, since the problem of financing had not yet been resolved, no decision had been taken on that point.

27. In justifying the usefulness of the studies, the Committee had pointed out that reports by States could not be the only basis for its work and that members should be able to benefit from the experience of other United Nations organs. The studies would provide additional information for the Committee members, clarify the main principles of the Convention and encourage new ideas. The topics for studies which might be of interest included the best interests of the child, a topic already being examined by UNICEF, refugee children, which could be studied in collaboration with the Office of the United Nations High Commissioner for Refugees, and child labour, including female children in domestic service.

28. Mr. KOLOSOV asked whether the agenda item under consideration covered the choice of theme for the general discussion at the next session.

29. The CHAIRMAN said she saw no reason why the Committee should not consider the subject it wished to discuss in depth at its next session, since it had decided that as far as was possible one day in each session would be allocated to a thematic debate.

30. Mrs. SANTOS PAIS said that she would confine herself to making a few suggestions, since she had no preconceived ideas about future studies. The theme of the general discussion at the present session, namely children in armed conflicts, could form the subject of a useful study. The conclusions of the working group to consider situations of the violation of the rights of the child involving a number of States might take the form of a study or it could

provide a framework for a more in-depth study. It might also be useful to study the question of the role of the child in the decision-making process within the family, in view of the fact that 1994 would be International Year of the Family.

31. Mr. GOMES DA COSTA said he hoped that a study would be made on the theme of children in conflict with the law, on the basis of articles 37 and 40 of the Convention. Numerous works were available on child labour (produced by UNICEF and ILO), the education of children (produced by UNESCO) and children's health (produced by UNICEF and WHO), but there were far fewer works and reports on juvenile delinquency. The scope and extent of the phenomenon were not well known. The fields of application of articles 37 and 40 of the Convention had hardly been studied by the United Nations specialized agencies. Non-governmental organizations did maintain a visible and active presence in protecting minors deprived of their freedom, but their observations only covered short periods and limited geographical areas. Therefore, the Committee should envisage commissioning, as a priority, a wide-ranging investigation into the subject of children who broke the law.

32. The CHAIRMAN drew the Committee's attention to resolution 1991/16 of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the subsequent decision of the Secretary-General to organize a meeting of experts on application of international standards concerning the human rights of detained juveniles, to be held in March 1993 under the auspices of the Centre for Human Rights, UNICEF and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs.

33. Mrs. SANTOS PAIS said that the Committee on the Rights of the Child had been invited to take part in that meeting.

34. Ms. MASON requested further information and suggested that she might represent the Committee at the meeting.

35. The CHAIRMAN said that that matter would be considered later.

36. Mr. KOLOSOV suggested two categories of subjects to be studied, the first relating to the implementation of the provisions of articles 12, 13, 14 and 17 of the Convention. Article 12 stipulated that the child who was capable of forming his or her own views should have the right to express those views on all matters affecting the child, while article 13 stated that the child had the right to freedom of expression, thus reflecting the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 14 specified that States parties should respect the right of the child to freedom of thought, conscience and religion. Lastly, article 17 recognized the important function performed by the mass media. That group of issues might interest UNESCO and other bodies, but it was regrettable that the issue of information, viewed from the standpoint of shaping the mentality of children, had not yet been studied in depth at the international level.

37. The second category of studies concerned to the rights of children belonging to minorities. It was a multi-disciplinary subject that was of relevance to most States parties, and was a matter of urgency.

38. Mr. MILJETEIG-OLSSEN (United Nations Children's Fund) referred to the studies UNICEF was undertaking on the rights of the child, and said that the Executive Board had authorized UNICEF to carry out studies on the implementation of the provisions of the Convention on the Rights of the Child, in particular in those areas which would be of interest to both developed and developing countries. He was willing to consider with the Committee any suggestions it might like to make in that regard.

39. Firstly, there was the study, mentioned at a previous meeting, on children in armed conflicts. UNICEF was carrying out numerous studies and research projects at its International Child Development Centre in Florence, Italy. A study on the concept of the best interests of the child, corresponding to the provisions of article 3 of the Convention, was in progress. Another study was planned on issues relating to article 4 of the Convention and it would consider, in particular, methods of implementation of the Convention. A study was also being undertaken on the question of the compatibility and complementarity of the Convention and the Convention on the Elimination of All Forms of Discrimination against Women.

40. Mrs. EUFEMIO said that the list of studies presented by the representative of UNESCO could be expanded by the studies produced by professional institutes, universities or other human rights treaty bodies. The subjects for study should be identified and then classed in five broad categories and the Secretariat or members of the Committee should then draw up a bibliography which would be an up-to-date list of available studies and studies to be undertaken.

41. The CHAIRMAN said that the list of studies should also include those which were in the process of completion.

42. Mrs. KLEIN-BIDMON (Representative of the Secretary-General), said that the Secretariat would do its best to accomplish that task.

43. Mr. HAMMARBERG said that United Nations resources were too limited for it to be able to carry out all the studies desirable, but it should be borne in mind that university institutes and NGOs were prepared to assist the Committee. For example, the University of Ghent, in Belgium, had contacted the Committee to ask for advice on setting up a research unit specializing in the rights of the child. Such a task did not fall directly within the competence of the Committee, but collaboration of that kind would enable progress to be made in the work on the rights of the child. The dialogue entered into with research institutes and universities was in the spirit of international cooperation evoked in the Convention. The United Nations could thus act as an excellent catalyst and also benefit from outside research activity.

44. Mgr. BAMBAREN GASTELUMENDI said he endorsed Mr. Hammarberg's suggestion and pointed out that UNICEF not only undertook studies but also set up programmes in various countries with the aid of various institutions. Violations of children's rights were a cause for great concern, they were not accorded due attention, and therefore one subject for study might be that of increasing poverty, since poverty affected not only the rights but the lives of children. The subject was directly related to the provisions of articles 19 to 36 of the Convention.

45. The CHAIRMAN suggested that a list should be drawn up of all the studies that had been mentioned and the proposals made during the session. It would then be possible to determine priorities without losing sight of the importance of the practical actions to which the studies could give rise.

46. Mr. GOMES DA COSTA said he welcomed Mrs. Eufemio's proposal about establishing a bibliography of existing studies on the rights of the child. It would be a wise course for the Committee to encourage studies to be carried out into areas where little information was available.

47. The CHAIRMAN read out the list of topics for study proposed by the Committee, namely: the best interests of the child, refugee children, child labour, children's participation in the decision-making process within the family, children in conflict with the law, children in situations of extreme poverty, children belonging to minorities, and studies on articles 12, 13, 14 and 17 of the Convention, and, in particular, on means of providing information, through schools and by other media.

48. Mr. HAMMARBERG said he endorsed the list and hoped it would also include a study on physical integrity, to cover situations in which Governments were responsible for violations, and also violations committed within a social and family context, both in industrialized countries and in developing countries.

49. Mr. KOLOSOV said that, once the priorities were determined, it was important not to forget to inform all the bodies concerned so that they could allow for the time and resources necessary to carry out the studies.

50. The CHAIRMAN said that, as she understood it, the list of studies was not confined to studies carried out by UNICEF and she wondered how it would be possible to obtain information on studies in progress in other organizations. It would be useful to have access also to field studies which would reflect the viewpoint of children themselves, which would be in conformity with the spirit of the provisions of the Convention.

51. Mr. MILJETEIG-OLSSEN (United Nations Children's Fund), referring to Mr. Kolosov's comments, said that UNICEF's research activities were always planned on a long-term basis and it might be a good idea for the Committee to consider initially the studies that were already available and might be useful to it. The Committee could play an important role in determining the issues which should be discussed at the international level in connection with research into the rights of the child.

52. Mrs. SANTOS PAIS said it was not enough to have a list of priority issues. Other organizations should be encouraged at the same time to consider those issues, and the interaction of the organizations with the Committee itself should be monitored so that the Committee would be informed of studies undertaken by countries and by themes.

53. Mrs. EUFEMIO said that the issue of alternative care should not be forgotten. In that regard, could the extended family, or if necessary, adoption by a foster family, be regarded as alternative care, particularly from the standpoint of 1994, which would be the International Year of the Family? Such a study would allow for the consideration and comparison of various cultures in which those questions arose.

The meeting rose at 1 p.m.